IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.194 OF 2006

Keshav Shivram Rawool & Anr. ...Appellants
vs.
Yeshwant Nhanu Bugade
(since deceased through L.Rs.)
Ravindra Yashwant Bugade & Ors. ...Respondents

Mr.Sudhir Prabu for the Appellants
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 14, 2006.

P.C.:

1. Heard Advocate for the Appellants. The Appellants are the original Defendants. The Trial Court dismissed the suit filed by the original Plaintiffs. An Appeal preferred by the original plaintiffs was allowed and a decree for declaration, partition and injunction was passed.

2. The learned Advocate for the Appellants submitted that the issues involved in the present were concluded between the parties by the decision of the Civil Court in R.C.S. No.5 of 1968. He submitted that the order passed under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 and the consequent certificate issued in favour of the original Plaintiff under Section 32M of the said Act of 1948 are totally contrary to the decree passed by the Civil Court in the said earlier suit. He submitted that the trial Court recorded a finding that the present suit filed by the original Plaintiffs was barred by the principles of res judicata. The Appellate Court has not set aside the said finding specifically recorded by the Trial Court.

3. I have considered the submissions. So far as the order under Section 32G of the said Act of 1948 passed in favour of the original Plaintiffs is concerned, it is an admitted position that the present Appellants preferred an Appeal for challenging the the said order but the Appellants could not succeed. Thus, the order under Section 32G said Act of 1948 passed in favour of the original Plaintiffs has attained finality. By the certificate issued under Section 32M of the said Act of 1948 admittedly the original Plaintiff has declared to be the owner of the property. The said certificate has attained finality. The said certificate has been issued after the decree was passed in R.C.S.No.5 of 1968.

4. So far as the issue regarding Res Judicata is concerned, the Appellate Court may not have recorded a separate finding. However, in paragraph 11 of the Judgment, the lower Appellate Court has observed that the partition decree in R.C.S.No.5 of 1968 will not affect the rights of the original plaintiff over the suit land which the original Plaintiff has acquired under the 32M certificate.

5. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.

under Section 32-G of Bombay Tenancy and

Agricultural Lands Act, 1948

under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947